

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1283 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MEHTA DIPAK MANUBHAI

Versus

GUJARAT STATE LAND DEVELOPMENTCORPN LTD

Appearance:

Mr. Shalin N. Mehta for MR GIRISH PATEL for Petitioner
MR BA VAISHNAV for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 16/07/1999

ORAL JUDGEMENT

The petitioner in this petition challenges the action of the first respondent Corporation in imposing the penalty and stoppage of two increments with the future effect, and the decision to recover the amount in sum of Rs.700/- as the loss sustained by the Corporation. The said orders came to be confirmed by the appellate

authority.

Ld. counsel Mr. Mehta who appears for the petitioner draws my attention to Rule 104 of the Service Rules 1979 and especially to Clause (ii) thereof, which runs as under:-

" No penalty shall be imposed on any employee unless the appointing authority or such other authority empowered in this behalf is satisfied that a fair and proper enquiry was made and the charges leading to the penalties were proved. "

Looking to the above said Rule and sub rule (ii) thereof, it is amply clear that no penalty could be imposed on the employee of the Corporation unless the appointing authority or any other authority duly empowered in this behalf is satisfied that a fair and proper inquiry was made and that the charges leading to the penalties were duly proved.

It is not in dispute that no inquiry as contemplated under Rule 104 of the above said Rules had ever taken place. It appears that a show cause notice came to be issued to the petitioner which straightway was followed by the orders of the stoppage of two increments and recover in sum of Rs.700/- as the loss sustained by the first respondent.

It is indeed the say of the respondent in their affidavit duly highlighted by Ld. counsel Mr. Vaishnav that, as a matter of fact the notice came to be given to the petitioner and later on the above said order came to be passed and therefore the principles of natural justice have been adhered to in substance and in reality. But it should not be overlooked that a mere notice followed by the orders in question cannot take place of the regular inquiry as contemplated under Rule 104 of the Service Rules 1979. On this count alone the present petition requires to be allowed and the orders in question require to be quashed. I order accordingly.

It shall be upon for the respondent Corporation to have the regular inquiry as contemplated under Rule 104 of the Service Rules 1979. This exercise if resorted to, should be completed as early as possible. The petition succeeds to the above said extent and the same is hereby accordingly allowed. Rule is made absolute to the said extent only, with no order as to costs.

/vgn.